500 North Wakefield Drive
P.O. Box 6066
Newark, 19714-6066

delmarva power®
An Exelon Company

Todd L. Goodman
Associate General Counsel

302.353.7979 – Business Cell
302.429.3786 – Telephone
302.429.3801 – Facsimile

todd.goodman@pepcoholdings.com

July 7, 2016

Filed Via DelaFile

Donna Nickerson, Secretary
Delaware Public Service Commission
861 Silver Lake Boulevard
Cannon Building, Suite 100
Dover, DE 19904

Re: PSC Docket No. 14-193
Delmarva Power/Exelon Merger

Dear Ms. Nickerson:

Paragraph 49 of the Settlement Agreement in the Delaware Merger proceeding (Docket No. 14-193 – approved by Order No. 8746, June 2, 2015) provides, in pertinent part:

> *49. As soon as is reasonably practicable, but in any event within 180 days following closing of the Merger, Exelon will obtain a legal opinion in customary form and substance and reasonably satisfactory to the Commission, to the effect that, as a result of the ring-fencing measures it has implemented for PHI and its subsidiaries, a bankruptcy court would not consolidate the assets and liabilities of the SPE with those of Exelon or EEDC, in the event of an Exelon or EEDC bankruptcy, or the assets and liabilities of PHI or its subsidiaries with those of either the SPE, Exelon or EEDC, in the event of a bankruptcy of the SPE, Exelon or EEDC....*

The necessary non-consolidation opinion has been obtained from the law firm, Ballard Spahr and is attached herewith, along with Ballard Spahr's correspondence to the Commission.

Please do not hesitate to contact me if you have any questions.

Sincerely,

Todd L. Goodman

att.

Ballard Spahr LLP

1735 Market Street, 51st Floor
Philadelphia, PA 19103-7599
TEL 215.665.8500
FAX 215.864.8999
www.ballardspahr.com

June 29, 2016

Delaware Public Service Commission

Re: Substantive Consolidation – PH HoldCo LLC and Pepco Holdings

Reference is made to our legal opinion of even date herewith (the "Ballard Opinion") attached hereto.

Please be advised that the Delaware Public Service Commission (the "Commission") is hereby authorized to rely on the Ballard Opinion as if it were originally addressed to the Commission.

Very truly yours,

Ballard Spahr LLP

Ballard Spahr LLP

1735 Market Street, 51st Floor
Philadelphia, PA 19103-7599
TEL 215.665.8500
FAX 215.864.8999
www.ballardspahr.com

June 29, 2016

Exelon Corporation
10 South Dearborn Street
Chicago, Illinois 60680-5379

PH HoldCo LLC and
Pepco Holdings LLC
701 Ninth Street NW
Washington, DC 20068

Re: Substantive Consolidation – PH Holdco LLC and Pepco Holdings

Ladies and Gentlemen:

We have acted as counsel to Exelon Corporation, a Pennsylvania corporation ("Exelon") and PH Holdco LLC, a Delaware limited liability company ("Holdco"), for the limited purpose of opining as to whether, in a properly presented and argued proceeding in a case under Title 11 of the United States Code (the "Bankruptcy Code") in which (i) Exelon and/or Exelon Energy Delivery Company LLC, a Delaware limited liability company ("EEDC," and collectively with Exelon, the "Exelon Entities"), were a debtor, a bankruptcy court of competent jurisdiction would, under applicable federal bankruptcy law, apply the doctrine of substantive consolidation to consolidate the assets and liabilities of Holdco with the assets and liabilities of such debtor or (ii) one of the Exelon Entities or Holdco was a debtor, a bankruptcy court of competent jurisdiction would, under applicable federal bankruptcy law, apply the doctrine of substantive consolidation to consolidate the assets and liabilities of Holdco, Pepco Holdings LLC (formerly Pepco Holdings, Inc.), a Delaware limited liability company ("Pepco Holdings"), Atlantic City Electric Company, a New Jersey corporation ("ACE"), Delmarva Power & Light Company, a Delaware and Virginia corporation ("Delmarva"), and Potomac Electric Power Company ("Pepco," and together with ACE and Delmarva, the "Pepco Holdings Utilities") with the assets and liabilities of such debtor.

This opinion may be relied upon by you and may not be used or relied upon by any other persons for any other purpose, without in each instance our prior written consent; provided, however, that Moody's Investors Service, Inc., Standard & Poor's Ratings Services and Fitch

Inc. may rely on this opinion as if it were addressed to them. You may also furnish copies hereof (i) to your independent auditors, advisors and attorneys; (ii) upon the request of any state or federal authority or official having regulatory jurisdiction over you; and (iii) pursuant to order or legal process of any court or governmental agency.

I. FACTS AND ASSUMPTIONS

In rendering the opinions set forth herein, we have made such examination and investigation as we have deemed relevant or necessary as the basis for the opinions set forth below, including an examination of originals or copies, certified or otherwise identified to our satisfaction, of the agreements and other documents specifically described herein by name and date and inquiries of officers and representatives of the Exelon Entities, Holdco, Pepco Holdings and the Pepco Holdings Utilities. We have relied upon, and assumed the accuracy of, certificates and other documents and records furnished or made available to us, and statements made, in response to our inquiries with respect to the factual matters set forth herein by officers of Exelon Entities, Holdco, Pepco Holdings and the Pepco Holdings Utilities. We have assumed (i) the genuineness of all signatures, (ii) the authenticity of all documents submitted to us as originals, (iii) the conformity to original documents of all documents submitted to us as certified, conformed or photostatic copies, and (iv) that the following facts and assumptions in this Part I are true on the date hereof and will remain true at all other times relevant to this opinion. In addition, we assume that Exelon Entities, Holdco, Pepco Holdings and the Pepco Holdings Utilities have been and will continue to be in compliance with all of the laws, regulations, orders and agreements referred to in this Part I in all material respects and to the extent relevant to this opinion letter.

A. The Merger

On April 29, 2014, Exelon and Pepco Holdings, Inc. executed an Agreement and Plan of Merger (as subsequently amended and restated as of July 18, 2014) to combine the two companies in an all cash transaction. On March 23, 2016, following the receipt of all required regulatory approvals, Exelon and Pepco Holdings, Inc. consummated the merger of Pepco Holdings, Inc. with a Purple Acquisition Corp. (the "Merger").

Prior to consummation of the Merger, the board of directors of Pepco Holdings, Inc. authorized the conversion of Pepco Holdings, Inc. into a limited liability company pursuant to Section 266 of the General Corporation Law of the State of Delaware and Section 18-214 of the Limited Liability Company Act of the State of Delaware (the "Conversion"). Following consummation of the Merger, the Conversion was approved by Exelon and EEDC as the sole shareholders of Pepco Holdings, Inc. Pepco Holdings, Exelon and EEDC caused to be filed with the Secretary of State of Delaware the Certificate of Conversion and the Certificate of Formation required by Section 18-214(b) of the Act, and the Conversion has become effective.

B. Ring-Fencing Measures

In connection with the Merger approval proceedings, the Exelon Entities and Pepco Holdings committed to implement the following measures (the "Ring-Fencing Measures"):

1. Exelon and EEDC established Holdco as a special purpose limited liability company for the purpose of holding 100% of the equity interest in Pepco Holdings.

2. Holdco is direct subsidiary of EEDC and an indirect subsidiary of Exelon.

3. Immediately following the closing of the Merger, EEDC transferred 100% of the equity interest in Pepco Holdings to Holdco with the intention of removing Pepco Holdings and the Pepco Holdings Utilities from the bankruptcy estate of Exelon and EEDC.

4. Pepco Holdings will continue to hold 100% of the equity of the Pepco Holdings Utilities.

5. Holdco will have no employees and no operational functions other than those related to holding the equity interests in Pepco Holdings.

6. Holdco has adequate capitalization in light of its contemplated business purpose; provided, however, that the Exelon Entities will not be required to make any additional capital contributions to Holdco.

7. Holdco is restricted under the PH Holdco Limited Liability Company Operating Agreement, dated as of July 9, 2015 (the "Holdco Operating Agreement") to performance of certain limited activities in compliance with its special purpose status. In addition, the Holdco Operating Agreement contains legal separateness provisions, as more fully described in Section I.C. below.

8. Holdco has four directors appointed by EEDC. One of the four directors is an independent director, who is an employee of an administration company in the business of protecting special purpose entities, and meets the other independence criteria set forth in the Holdco Operating Agreement. One other director was appointed from among the officers or employees of Pepco Holdings or a subsidiary of Pepco Holdings. The other two directors are officers or employees of Exelon or its affiliates, including Pepco Holdings and its subsidiaries.

9. The consent of Holdco's independent director is required in order for Holdco or Pepco Holdings to initiate a voluntary bankruptcy, insolvency, dissolution, reorganization, liquidation or any other similar proceeding.

10. Holdco has issued a non-economic share to GSS Holdings (PH Utility), Inc. ("Member B") for the sole and limited purpose of restricting the right of Holdco to take certain bankruptcy-related actions.

11. Pepco Holdings' Limited Liability Company Operating Agreement, dated as of March 23, 2016 (the "Pepco Holdings Operating Agreement") contains legal separateness provisions, as more fully described in Section I.D. below.

12. Pepco Holdings has a board of directors consisting of seven or more people. A majority of the members of the Pepco Holdings board of directors must be "independent" (as defined by New York Stock Exchange rules). Of the remaining directors, at least one must be selected from among the officers or employees of Pepco Holdings or a Pepco Holdings subsidiary.

13. Pepco Holdings' chief executive officer and other senior officers who directly report to Pepco Holdings' chief executive officer will hold no positions (i.e., as directors, officers or employees) with Exelon or Exelon affiliates other than Pepco Holdings and Pepco Holdings' subsidiaries.

14. The Pepco Holdings Operating Agreement requires approval of the its entire board of directors to: (a) commence any case, proceeding or other action on behalf of Pepco Holdings under any existing or future law of any jurisdiction relating to bankruptcy, insolvency, reorganization, or relief for debtors; (b) institute proceedings to have Pepco Holdings adjudicated as bankrupt or insolvent; (c) consent to or acquiesce in the institution of bankruptcy or insolvency proceedings against Pepco Holdings; (d) file a petition or consent to a petition seeking reorganization, arrangement, adjustment, winding-up, dissolution, composition, liquidation, or other relief on behalf of Pepco Holdings of its debts under any federal or state law relating to bankruptcy; (e) apply for, or consent to, or acquiesce in the appointment of, a receiver, liquidator, sequestrator, trustee or other officer with similar powers of such person with respect to Pepco Holdings; (f) make any assignment for the benefit of the Pepco Holdings' creditors; (g) admit in writing Pepco Holdings' inability to pay its debts generally as they become due; (h) modify the legal separateness provisions of the Pepco Holdings Operating Agreement; or (i) remove the unanimous consent requirement set forth above.

15. Each of the Pepco Holdings Utilities' bylaws were amended to require unanimous consent of the board of directors of such entity and approval of such entity's shareholder to (a) commence any case, proceeding or other action on behalf of the company under any existing or future law of any jurisdiction relating to bankruptcy, insolvency, reorganization, or relief for

debtors; (b) institute proceedings to have the company adjudicated as bankrupt or insolvent; (c) consent to or acquiesce in the institution of bankruptcy or insolvency proceedings against the company; (d) file a petition or consent to a petition seeking reorganization, arrangement, adjustment, winding-up, dissolution, composition, liquidation, or other relief on behalf of the company of its debts under any federal or state law relating to bankruptcy; (e) apply for, or consent to, or acquiesce in the appointment of, a receiver, liquidator, sequestrator, trustee or other officer with similar powers of such person with respect to the company; (f) make any assignment for the benefit of the company creditors; (g) admit in writing the company inability to pay its debts generally as they become due; or (h) adopt an amendment or repeal of the unanimous consent requirement set forth above.

16. Holdco will maintain arms-length relationships with each of its affiliates and observe all necessary, appropriate and customary company formalities in its dealings with its affiliates. Pepco Holdings and Pepco Holdings' subsidiaries will maintain arms-length relationships with Exelon and its affiliates, including Holdco.

17. At all times, Holdco will hold itself out as an entity separate from its affiliates, will conduct business in its own name through its duly authorized directors and officers and comply with all organizational formalities to maintain its separate existence and shall use commercially reasonable efforts to correct any known misunderstanding regarding its separate identity. Pepco Holdings and the Pepco Holdings Utilities will hold themselves out as separate entities from Exelon, EEDC and Holdco, conduct business in their own names (provided that Pepco Holdings and each of the Pepco Holdings Utilities may identify itself as an affiliate of Exelon on a basis consistent with Exelon's other utility subsidiaries).

18. Holdco shall maintain its own separate books, records, bank accounts and financial statements reflecting its separate assets and liabilities. Pepco Holdings and each of the Pepco Holdings Utilities will maintain separate books, accounts and financial statements reflecting its separate assets and liabilities.

19. Holdco shall comply with Generally Accepted Accounting Principles in the United States ("GAAP") in all material respects (subject, in the case of unaudited financial statements, to the absence of footnotes and to normal year-end audit adjustments) in all financial statements and reports required of it and issue such financial statements and reports separately from any financial statements or reports prepared for its affiliates; provided that such financial statements or reports may be consolidated with those of its affiliates if the separate existence of Holdco and its assets and liabilities are clearly noted therein.

20. Holdco shall account for and manage all of its liabilities separately from any other entity, and pay its own liabilities only out of its own funds.

21. Holdco shall neither guarantee nor become obligated for the debts of any other entity nor hold out its credit or assets as being available to satisfy the obligations of any other entity.

22. Each of the Pepco Holdings Utilities will maintain separate debt and preferred stock, if any, so that none will be responsible for the debts or preferred stock of affiliated companies, and each will maintain its own corporate and debt credit rating as well as ratings for long-term debt and preferred stock, if any. Pepco Holdings and each of the Pepco Holdings Utilities will use reasonable efforts to maintain separate credit ratings for their publicly traded securities. Pepco Holdings will not issue additional long-term debt securities. In particular, Pepco Holdings shall not rollover or otherwise refinance its currently outstanding long-term debt by issuing new long-term debt. Pepco Holdings and each of the Pepco Holdings Utilities will use reasonable efforts and prudence to preserve investment grade credit ratings.

23. Holdco will not commingle its funds or other assets with the funds or other assets of any other entity and shall not maintain any funds or other assets in such a manner that it will be costly or difficult to segregate, ascertain or identify its individual funds or other assets from those of its owners or any other person.

24. Pepco Holdings and each of the Pepco Holdings Utilities will maintain in its own name all assets and other interests in property used or useful in their respective business and will not transfer its ownership interest in any such property to Exelon or an Exelon affiliate (other than a Pepco Holdings subsidiary) without requisite approval of the applicable state or local regulatory commission and any approval required under the Federal Power Act; provided that the foregoing shall not limit the ability of Pepco Holdings to transfer to Exelon or Exelon affiliates any business or operations of Pepco Holdings or Pepco Holdings subsidiaries that are not regulated by state or local utility regulatory authorities.

25. Holdco shall ensure that its funds will not be transferred to its owners or affiliates except with the consent and authority of Holdco's board of directors.

26. Holdco shall ensure that title to all real and personal property acquired by it is acquired, held and conveyed in its name.

27. No entities other than Pepco Holdings and its subsidiaries, including the Pepco Holdings Utilities and PHI Service Company, will participate in the Pepco Holdings Utilities' money pool. The Pepco Holdings Utilities will not participate in any money pool operated by Exelon, and there will be no commingling of the Pepco Holdings money pool funds with funds of Exelon. Any deposits into or loans through the Pepco Holdings money pool by Pepco Holdings Utilities shall be on terms no less favorable than the depositor or lender could obtain through a short-term investment of similar funds with independent parties. Any borrowings from the Pepco Holdings money pool by one of the Pepco Holdings Utilities shall be on terms no less

favorable and cost effective than the Pepco Holdings Utility could obtain through short-term borrowings from (including sales of commercial paper to) independent parties.

28. Holdco will maintain a separate name from and will not use the trademarks, service marks or other intellectual property of Exelon, Pepco Holdings, or Pepco Holdings' subsidiaries. Pepco Holdings and the Pepco Holdings Utilities will each maintain a separate name from and will not use the trademarks, service marks or other intellectual property (i.e., identifying marks) of Exelon or its other affiliates, except that Pepco Holdings and each of the Pepco Holdings Utilities may identify itself as an affiliate of Exelon on a basis consistent with the practices of Exelon's other utility subsidiaries.

29. Any amendment to the organizational documents of Holdco that would remove or alter the voting or other Ring-Fencing Measures described above will require the unanimous vote of the board of directors of Holdco, including the independent director, and the affirmative consent of the holder of the Golden Share.

For purposes of this opinion, we have assumed that, following consummation of the Merger, the Exelon Entities, Holdco, Pepco Holdings and the Pepco Holdings Utilities have complied and will comply with the Ring-Fencing Measures.

C. Holdco Operating Agreement

Holdco is a limited-purpose, limited liability company organized under the laws of the State of Delaware. EEDC and Member B are the sole members of Holdco, and collectively own 100% of the outstanding membership interests in Holdco.

EEDC, Member B and Holdco are party to the Holdco Operating Agreement, which sets forth the terms by which Holdco is operated, including the following (capitalized terms not otherwise defined in this Section I.C. having the meanings set forth in the Holdco Operating Agreement):

1. EEDC is the Class A Member holding 100% of the Class A Membership Units. The Class A Member is allocated all profits and losses and is entitled to all distributions from Holdco as specified in Sections 6.1 and 6.2 of the Holdco Operating Agreement.

2. Member B is the Class B Member holding 100% of the Class B Membership Units. Member B shall not be allocated any profits or losses and shall not be entitled to any distributions from Holdco as specified in Sections 6.1 and 6.2 of the Holdco Operating

Agreement. The Class B Member shall not be required to make any capital contribution to Holdco at any time. The Holdco Operating Agreement further provides that the Class B Member is a Member for the sole and limited purpose of restricting the right of Holdco to take certain actions as set forth in Section 5.1(b) of the Holdco Operating Agreement, which relates to limitations on Holdco's activities, including bankruptcy, insolvency and dissolution, among others, and Section 9.3 of the Holdco Operating Agreement, which relates to certain amendments to the Holdco Operating Agreement or its Certificate of Formation.

3. The permitted activities of Holdco are restricted by the Holdco Operating Agreement solely to (a) holding limited liability company interests of Pepco Holdings and (b) engaging in and performing any lawful act or activity and exercising any powers permitted to limited liability companies organized under the laws of the State of Delaware that are related or incidental to, and necessary, convenient or advisable for, the accomplishment of the purpose of holding the limited liability company interests of Pepco Holdings.

4. The Holdco Operating Agreement limits Holdco's performance of certain activities consistent with its special purpose nature; specifically, Holdco shall:

(a) not commingle its funds or other assets with the funds or other assets of any other Person, nor maintain any funds or other assets in such a manner that it will be costly or difficult to segregate, ascertain or identify its individual funds or other assets from those of its Members or any other Person;

(b) at all times hold itself out to the public and all other Persons as a legal entity separate from any other Person;

(c) conduct its business in its own name through its duly authorized Directors and Officers and comply with all organizational formalities to maintain its separate existence;

(d) not use the trademarks, service marks or other intellectual property of any of its Affiliates;

(e) maintain its own separate books, records, bank accounts and financial statements reflecting its separate assets and liabilities;

(f) maintain an arm's-length relationship with each of its Affiliates;

(g) maintain adequate capital in light of its contemplated business purpose, transactions and liabilities; provided, however, the foregoing shall not

require the Members to make any additional capital contributions to Holdco;

(h) comply with GAAP in all material respects (subject, in the case of unaudited financial statements, to the absence of footnotes and to normal year-end audit adjustments) in all financial statements and reports required of it and issue such financial statements and reports separately from any financial statements or reports prepared for its Members and Affiliates; provided that such financial statements or reports may be consolidated with those of its Affiliates if the separate existence of Holdco and its assets and liabilities are clearly noted therein;

(i) account for and manage all of its liabilities separately from any other Person, and pay its own liabilities only out of its own funds;

(j) neither guarantee nor become obligated for the debts of any other Person nor hold out its credit or assets as being available to satisfy the obligations of any other Person;

(k) use commercially reasonable efforts to correct any known misunderstanding regarding its separate identity;

(l) ensure that title to all real and personal property acquired by it be acquired, held and conveyed in its name;

(m) observe all necessary, appropriate and customary company formalities in its dealings with its members and Affiliates;

(n) make all decisions with respect to its business and daily operations independently, although its Operating Directors and Officers making any particular decision may also be employees, officers, directors or managers of the Class A Member, its members or its Affiliates;

(o) ensure that its funds will not be transferred to the Class A Member or its Affiliates except with the consent and authority of the Board;

(p) not acquire, assume or guarantee obligations of any Affiliate;

(q) not pledge its assets for the benefit of any other Person or make loans to, or purchase or hold any indebtedness of, any other Person; and

(r) cause its Directors, Officers and its other representatives to act, in their reasonable discretion, at all times with respect to, consistently with, and in furtherance of, the foregoing.

5. Pursuant to Section 5.1(b) of the Holdco Operating Agreement, neither the Members nor the Board nor any Director nor any Officer nor any other Person shall be authorized or empowered, nor shall they permit Holdco, without the unanimous prior approval of the Board, including the Independent Director and the prior written consent of the Class B Member, to:

(a) commence any case, proceeding or other action on behalf of Holdco under any existing or future law of any jurisdiction relating to bankruptcy, insolvency, reorganization, or relief for debtors;

(b) institute proceedings to have Holdco adjudicated as bankrupt or insolvent;

(c) consent to or acquiesce in the institution of bankruptcy or insolvency proceedings against Holdco;

(d) file a petition or consent to a petition seeking reorganization, arrangement, adjustment, winding-up, dissolution, composition, liquidation, or other relief on behalf of Holdco of its debts under any federal or state law relating to bankruptcy;

(e) apply for, or consent to, or acquiesce in the appointment of, a receiver, liquidator, sequestrator, trustee or other officer with similar powers of such Person with respect to Holdco;

(f) make any assignment for the benefit of Holdco's creditors;

(g) admit in writing Holdco's inability to pay its debts generally as they become due;

(h) modify the provisions of the Holdco Operating Agreement which limit Holdco's activities; or

(i) remove the unanimous consent requirement of the Holdco Operating Agreement regarding (i) bankruptcy, insolvency, dissolution, reorganization, liquidation or any similar proceeding or (ii) the making of any assignments for the benefit of Holdco's creditors or modifications to the Holdco Operating Agreement which limit Holdco's activities thereunder.

D. Pepco Holdings Operating Agreement

The initial Members of Pepco Holdings were Exelon and EEDC. Immediately following the formation of Pepco Holdings, Exelon transferred its Interest to EEDC. Immediately following the formation of Pepco Holdings and the Transfer of Unregulated Businesses to EEDC as contemplated by Section 5.1.3(c) of the Pepco Holdings Operating Agreement, EEDC transferred its entire Interest as a Member to Holdco as an absolute conveyance with the intention of removing Pepco Holdings and the Pepco Holdings Utilities from the bankruptcy estate of Exelon and EEDC. Holdco was admitted as a Member as Successor to EEDC without any action by Pepco Holdings, the Members or the Board of Directors (capitalized terms not otherwise defined in this Section I.D. having the meanings set forth in the Pepco Holdings Operating Agreement).

Pursuant to Section X of the Pepco Holdings Operating Agreement, Pepco Holdings is required to comply with the following separateness provisions:

(a) Pepco Holdings shall hold itself out to the public and all other Persons as a legal entity separate from Exelon and its Affiliates and the Members and conduct business in accordance with the separateness provisions of the Pepco Holdings Operating Agreement.

(b) Pepco Holdings shall maintain its own separate books, records, accounts, and financial statements reflecting its separate assets and liabilities. Pepco Holdings shall maintain its financial statements separate from those of any other Person other than Pepco Holdings' consolidated Subsidiaries.

(c) Pepco Holdings will maintain in its own name all assets and other interests in property used or useful in its business and ensure that title to all real and personal property acquired by it is acquired, held and conveyed in its name. Pepco Holdings will not transfer its ownership interest in any such property to Exelon or an Affiliate of Exelon without approval, if required, of state or local utility regulatory authorities and any required approval under the Federal Power Act; provided that the foregoing shall not limit the ability of Pepco Holdings to transfer to Exelon, EEDC, the Members or other Affiliates of Exelon any business or operations of Pepco Holdings or its Subsidiaries that are not regulated by state or local utility regulatory authorities. Pepco Holdings shall not commingle its funds or other assets with the funds or other assets of any other Person, and not maintain any funds or other assets in such a manner that it will be costly or difficult to segregate, ascertain or identify its individual funds or other assets as separate from those of Affiliates, Members or any other Person.

(d) Pepco Holdings shall conduct its business in its own name through its duly authorized Directors, officers and agents and comply with all organizational formalities in its dealings with other Persons to maintain its separate existence. Pepco Holdings shall maintain a separate name from and will not use the trademarks, service marks or other intellectual property (i.e., identifying marks) of Exelon or other Affiliates of Exelon, except that Pepco Holdings may identify itself as an Affiliate of Exelon on a basis consistent with utility Subsidiaries of Exelon. Pepco Holdings shall use commercially reasonable efforts to correct any known misunderstanding regarding its separate identity. Pepco Holdings shall, conduct its dealings with other Persons (including the Members and Affiliates) on an arm's length, fair and reasonable basis.

(e) Pepco Holdings shall not assume liability for the debts of Exelon, the Members, or any other Affiliate of Pepco Holdings other than a Company Subsidiary. Pepco Holdings shall not guarantee the debt or credit instruments of Exelon, the Members, or any Affiliate of the Company other than a Company Subsidiary. Pepco Holdings will use reasonable efforts and prudence to preserve investment grade credit ratings. Pepco Holdings shall account for and manage all of its liabilities separately from any other Person and pay its obligations and liabilities out of its own funds. Pepco Holdings shall not hold out its credit as being available to satisfy the obligations or liabilities of any other Person other than a Company Subsidiary, except for obligations or liabilities relating to assets transferred to Pepco Holdings or a Company Subsidiary from any other Person. Pepco Holdings shall maintain adequate capital in light of its contemplated business purpose, transactions and liabilities; provided, however, the foregoing shall not require the Members to make any additional capital contributions to Pepco Holdings.

In addition, pursuant to Section 5.2.8 of the Pepco Holdings Operating Agreement, the unanimous prior approval of Pepco Holdings Board of Directors is required to: (a) commence any case, proceeding or other action on behalf of Pepco Holdings under any existing or future law of any jurisdiction relating to bankruptcy, insolvency, reorganization, or relief for debtors; (b) institute proceedings to have Pepco Holdings adjudicated as bankrupt or insolvent; (c) consent to or acquiesce in the institution of bankruptcy or insolvency proceedings against Pepco Holdings; (d) file a petition or consent to a petition seeking reorganization, arrangement, adjustment, winding-up, dissolution, composition, liquidation, or other relief on behalf of Pepco Holdings of its debts under any federal or state law relating to bankruptcy; (e) apply for, or consent to, or acquiesce in the appointment of, a receiver, liquidator, sequestrator, trustee or other officer with similar powers of such Person with respect to Pepco Holdings; (f) make any

assignment for the benefit of Pepco Holdings' creditors; (g) admit in writing the Pepco Holdings' inability to pay its debts generally as they become due; (h) modify the provisions of Section X of the Pepco Holdings Operating Agreement; or (i) remove the unanimous consent requirement set forth above.

E. Intercompany Relationship Among the Exelon Entities, Holdco, Pepco Holdings and the Pepco Holdings Utilities

We have assumed that the following statements are true in all material respects on the date hereof and will remain true in all material respects at all other times relevant to this opinion:

1. Holdco has acted and will act in accordance with the requirements of the Holdco Operating Agreement.

2. Pepco Holdings has acted and will act in accordance with the requirements of the Pepco Holdings Operating Agreement.

3. The Exelon Entities, Holdco, Pepco Holdings and the Pepco Holdings Utilities will comply with the Ring-Fencing Measures.

4. EEDC may, from time to time, contribute assets to Holdco, which contributions will be properly reflected in the books and records of Holdco. Any capital contributions by EEDC to Holdco will be, in all instances, made in good faith and without actual intent to hinder, delay, or defraud any creditors. If EEDC elects to make a capital contribution to Holdco, the contribution will increase the value of EEDC's equity interest in Holdco. Any capital contribution, if made, will be properly reflected in the books and records of Holdco and EEDC and will be made in compliance with the Holdco Operating Agreement and applicable law. However, EEDC is under no obligation to make such contributions.

5. All corporate formalities and actions will be observed and performed in connection with any transfer of assets, including transfers between Holdco and the Exelon Entities or between Pepco Holdings and/or any of the Pepco Holdings Utilities and Holdco.

6. On the date hereof, Exelon has substantial going concern value, and the management of Exelon reasonably believes that Exelon is: (a) adequately capitalized to conduct its business and affairs as a going concern and to meet its financial obligations without the need for capital contributions, (b) solvent, (c) able to pay its debts as they come due, and (d) as a result, currently able to stand alone as an independent entity.

7. On the date hereof, EEDC has substantial going concern value, and the management of EEDC reasonably believes that EEDC is: (a) adequately capitalized to conduct its business and affairs as a going concern and to meet its financial obligations without the need

for capital contributions, (b) solvent, (c) able to pay its debts as they come due, and (d) as a result, currently able to stand alone as an independent entity

8. On the date hereof, Holdco has substantial going concern value, and the management of Holdco reasonably believes that Holdco is: (a) adequately capitalized to conduct its business and affairs as a going concern and to meet its financial obligations without the need for capital contributions, (b) solvent, (c) able to pay its debts as they come due, and (d) as a result, currently able to stand alone as an independent entity.

9. On the date hereof, Pepco Holdings has substantial going concern value, and the management of Pepco Holdings reasonably believes that Pepco Holdings is: (a) adequately capitalized to conduct its business and affairs as a going concern and to meet its financial obligations without the need for capital contributions, (b) solvent, (c) able to pay its debts as they come due, and (d) as a result, currently able to stand alone as an independent entity.

10. On the date hereof, ACE has substantial going concern value, and the management of ACE reasonably believes that ACE is: (a) adequately capitalized to conduct its business and affairs as a going concern and to meet its financial obligations without the need for capital contributions, (b) solvent, (c) able to pay its debts as they come due, and (d) as a result, currently able to stand alone as an independent entity.

11. On the date hereof, Delmarva has substantial going concern value, and the management of Delmarva reasonably believes that Delmarva is: (a) adequately capitalized to conduct its business and affairs as a going concern and to meet its financial obligations without the need for capital contributions, (b) solvent, (c) able to pay its debts as they come due, and (d) as a result, currently able to stand alone as an independent entity.

12. On the date hereof, Pepco has substantial going concern value, and the management of Pepco reasonably believes that Pepco is: (a) adequately capitalized to conduct its business and affairs as a going concern and to meet its financial obligations without the need for capital contributions, (b) solvent, (c) able to pay its debts as they come due, and (d) as a result, currently able to stand alone as an independent entity.

13. The Exelon Entities, Holdco, Pepco Holdings and the Pepco Holdings Utilities each has taken and will take such other actions as are reasonably necessary on its part to ensure that facts and assumptions set forth in this opinion remain true and correct in all material respects at all times.

14. Exelon, Pepco Holdings and the Pepco Holdings Utilities have disclosed and will continue to disclose the existence of Holdco and the implementation of the Ring-Fencing Measures in their respective periodic and other reports under the Securities Exchange Act of 1934, which reports will be publicly available (the "Holdco Disclosure Reports").

II. DISCUSSION OF SUBSTANTIVE CONSOLIDATION

A. Discussion of Case Law

Substantive consolidation is a judicially created doctrine arising from the general equity powers granted to bankruptcy courts.[1] It has generally been recognized that no specific provision of the Bankruptcy Code expressly authorizes a court to order substantive consolidation and that such authority is derived from Section 105(a) of the Bankruptcy Code, which provides that: "The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of the Bankruptcy Code."[2] One case, however, suggests that Section 1123(a)(5) of the Bankruptcy Code authorizes substantive consolidation in the context of a plan of reorganization.[3]

Under the doctrine of substantive consolidation, a bankruptcy court may, if appropriate circumstances are determined to exist, consolidate the assets and liabilities of different entities by merging the assets and liabilities of the entities and treating the related entities as a consolidated entity for purposes of the bankruptcy proceedings. "[T]he intercompany claims of the debtor companies are eliminated, the assets of all debtors are treated as common assets and claims of outside creditors against any of the debtors are treated as against the common fund . . . ."[4]

---

1 F.D.I.C. v. Colonial Realty Co., 966 F.2d 57, 59 (2d Cir. 1992); Eastgroup Properties v. Southern Motel Assocs., 935 F.2d 245, 248 (11th Cir. 1991); In re Auto-Train Corp., Inc., 810 F.2d 270, 276 (D.C. Cir. 1987); In re Continental Vending Mach. Corp., 517 F.2d 997, 1000 (2d Cir. 1975), cert. denied, 424 U.S. 913 (1976); In re Affiliated Foods, Inc., 249 B.R. 770 (Bankr. W.D. Mo. 2000); In re Drexel Burnham Lambert Group, Inc., 138 B.R. 723 (Bankr. S.D.N.Y. 1992); In re Alico Mining, Inc., 278 B.R. 586, 588 (Bankr. M.D. Fl. 2002); In re Central European Industrial Development Co. LLC, 288 B.R. 572, 576 (Bankr. N.D. Cal. 2003); In re American Homepatient, Inc., 298 B.R. 152 (Bankr. M.D. Tenn. 2003), aff'd, 420 F.3d 559 (6th Cir. 2005).

2 2 Collier on Bankruptcy ¶ 105.09[1][b], at 105-90-91 (Alan N. Resnick & Henry J. Sommer eds., 16th rev. ed 2010). See generally id. at ¶ 105.09. at 105-90-107; Second Interim Report of Neal Batson, Court-Appointed Examiner, dated January 21, 2003, filed in connection with In re Enron Corp., Case No. 01-16034 (AJG) Jointly Administered (Bankr. S.D.N.Y.) (the "Second Batson Report") at 32-33.

3 See In re Stone & Webster, Inc., 286 B.R. 532, 541-543 (Bankr. D.Del. 2002).

4 Chemical Bank New York Trust Co. v. Kheel, 369 F.2d 845, 847 (2d Cir. 1966). See Eastgroup Properties, 935 F.2d at 248 ("[Substantive consolidation] involves the pooling of assets and liabilities of two or more related entities; the liabilities of the entities involved are then satisfied from the common pool of assets created by consolidation."); Colonial Realty, 966 F.2d at 58-59; In re Augie/Restivo Baking Co., 860 F.2d 515, 518 (2d Cir. 1988); In re Snider Bros., Inc., 18 B.R. 230, 234 (Bankr. D. Mass. 1982) (consolidation enables the court to disregard corporate entities in order to reach assets for the satisfaction of creditors of a related corporation); In re GC Companies, Inc., 274 B.R. 663, 672 (Bankr. D.Del. 2002) rev'd on other grounds, 298 B.R. 226 (D. Del. 2003). Substantive consolidation is not to be confused with joint (continued...)

Given that the power to order substantive consolidation derives from the equity jurisdiction of the bankruptcy courts, the issue is determined on a case-by-case basis and the decisions reflect the courts' analysis of the particular factual circumstances presented.[5] A court's inquiry requires an examination, inter alia, of the structures of the entities proposed to be consolidated, their intercorporate relationships, and their relationships with their respective creditors and other third-parties. Because the doctrine of substantive consolidation is an equitable one, the court often will also examine, inter alia, the impact upon each entity if consolidation were to be ordered, and whether such parties would be unfairly prejudiced or treated more equitably by substantive consolidation.[6]

The case law indicates a general recognition that substantive consolidation is an extraordinary remedy vitally affecting substantive rights, which, due to the potential inequities caused by the fact that consolidation almost invariably redistributes wealth among the creditors of consolidated entities, should only rarely be granted.[7] Similarly, because the disregard of

---

(...continued)

administration (also known as procedural consolidation), "in which inter alia, all docketing and noticing is done in one case file for more than one related case, but the estates and creditor bodies are not merged." In re Cooper, 147 B.R. 678, 682 (Bankr D. N.J. 1992).

Certain courts have held that they can consolidate estates as to certain claims (e.g., unsecured claims) even if it is not consolidating as to all claims. See, e.g., Cooper, 147 B.R. at 682; accord In re Parkway Calabasas Ltd., 89 B.R. 832, 837 (Bankr. C.D. Cal. 1988) (noting that to protect creditors, court may qualify the consolidation or only consolidate certain claims—unsecured rather than secured), aff'd, 949 F.2d 1058 (9th Cir. 1991); see In re Gulfco Inv. Corp., 593 F.2d 921, 927 (10th Cir. 1979) (substantive consolidation cannot reduce secured creditors to the status of unsecured creditors absent circumstances like fraud); see also Continental Vending Mach., 517 F.2d at 1000-02, wherein the court consolidated the cases for purposes of ascertaining the rights of unsecured creditors while leaving the position of secured creditors intact.

5 See 2 Collier on Bankruptcy ¶ 105.09[2], at 105-93 (Alan N. Resnick & Henry J. Sommer eds., 16th rev. ed. 2010) (stating that substantive consolidation cases are to a great degree sui generis).

6 See Augie/Restivo, 860 F.2d at 518; In re Central European Industrial Development Co. LLC, 288 B.R. at 576 (the primary purpose of substantive consolidation is to "insure the equitable treatment of all creditors").

7 In re Amco Ins., 444 F.3d 690, 697 (5th Cir. 2006) (noting in dicta that jurisdictions that allow substantive consolidation emphasize that it should be used 'sparingly'), cert. denied, 127 S. Ct. 389 (2006); In re Owens Corning, 419 F.3d 195, 208-9 (3d Cir. 2005) ("[T]here appears nearly unanimous consensus that [substantive consolidation] . . . is a remedy to be used 'sparingly'"); Auto-Train, 810 F.2d at 276; Augie/Restivo, 860 F.2d at 518; In re New Century TRS Holdings, Inc., 407 B.R. 576, 591 (D.Del. 2009) ("Because substantive consolidation is 'extreme' . . . and 'imprecise,' it works 'rough justice' and is to be used sparingly."); In re Source Enterprises, Inc., 392 B.R. 541, 552 (S.D.N.Y. 2008) (The sole purpose of substantive consolidation is "'to ensure the equitable treatment of all creditors and it is to be used (continued...)

separate existence is not generally favored, a presumption arises against substantive consolidation and the party seeking to substantively consolidate bears the burden of establishing the necessity for it. Thus, substantive consolidation is the exception rather than the rule.[8]

The initial cases ordering substantive consolidation generally involved fact patterns where it was alleged that one or more entities were "mere instrumentalities" or "alter egos" of one another. These cases often involved allegations of the use of an entity to hinder, delay or defraud creditors and involved state law concepts similar to the doctrine of piercing the corporate veil.[9] Subsequent cases generally departed from utilizing these state law concepts in favor of a

---

(...continued)

'sparingly.'"); In re American Camshaft Specialties, Inc., 410 B.R. 765, 786 (Bankr. E.D. Mich. 2009) ("The reason [that courts are reluctant to order substantive consolidation] is that "the doctrine authorizes a court to look past the limited liability that is a hallmark of corporate law in the United States and the legal separateness that it provides for."); Snider Bros., 18 B.R. at 234 ("substantive consolidation, in almost all instances, threatens to prejudice the rights of creditors. . . . This is so because separate debtors will almost always have different ratios of assets to liabilities."); Kheel, 369 F.2d at 847 ("The power to consolidate should be used sparingly because of the possibility of unfair treatment of creditors of a corporate debtor who have dealt solely with that debtor without knowledge of its interrelationship with others."); see also Eastgroup Properties, 935 F.2d at 248; In re World Access, Inc., 301 B.R. 217, 272 (Bankr. N.D. Ill. 2003).

8 See e.g., Auto-Train Corp., Inc., 810 F.2d at 276; Continental Vending Mach. Corp., 517 F.2d at 1001; Kheel, 369 F.2d at 847 (it should be the "rare case" where substantive consolidation is granted); In re DRW Property Co., 54 B.R. 489, 494 (Bankr. N.D. Tex. 1985) (courts should grant substantive consolidation sparingly because of the possibility of unfair treatment of some creditors); Second Batson Report at 33-34 (summarizing several Second Circuit cases holding that substantive consolidation "should be used sparingly" and "[t]he party seeking substantive consolidation has the burden of proof").

9 See, e.g., Stone v. Eacho, 127 F.2d 284 (4th Cir. 1942), cert. denied, 317 U.S. 635 (1942); Fish v. East, 114 F.2d 177 (10th Cir. 1940); Maule Industries Inc. v. Cerstel, 232 F.2d 294 (5th Cir. 1956). The court in Fish, 114 F.2d at 191, set forth an often-quoted list of factors to be considered in determining whether one entity is a "mere instrumentality" of another: the parent corporation owns all or a majority of the capital stock of the subsidiary; the parent and subsidiary corporations have common directors or officers; the parent corporation finances the subsidiary; the parent corporation subscribes to all the capital stock of the subsidiary or otherwise causes its incorporation; the subsidiary has grossly inadequate capital; the parent corporation pays the salaries or expenses or losses of the subsidiary; the subsidiary has substantially no business except with the parent corporation or no assets except those conveyed to it by the parent corporation; in the papers of the parent corporation, and in the statements of its officers, "the subsidiary" is referred to as a mere instrumentality or as a department or division; the directors or executives of the subsidiary do not act independently in the interest of the subsidiary, but take direction from the parent corporation; and the formal legal requirements of the subsidiary as a separate and independent corporation are not observed. For more recent cases involving these concepts, see In re I.R.C.C., Inc., 105 B.R. 237, 242 (Bankr. S.D.N.Y. 1989); Cooper, 147 B.R. at 683; In re Moran Pipe & Supply Co., 130 B.R. 588, 591 (Bankr. E.D. Okla. 1991); In re Mortgage Inv. Co. of El Paso, Tex., 111 B.R. 604, 610 (Bankr. W.D. Tex. 1990).

federal body of law. Some courts have in these cases ordered substantive consolidation where, among other things, the proponents have demonstrated either (i) a harm to be avoided or (ii) a benefit to be effected generally which, under the circumstances and considering whether the rights of third-parties would be unduly prejudiced thereby, it is equitable to effect.[10] In addition, courts have ordered substantive consolidation where interrelationships among entities have become hopelessly entangled, and there would be great difficulty and expense in separating the assets, liabilities, and businesses of the entities so that separate administration would not be practicable, i.e., "the time and expense necessary even to attempt to unscramble [the intercompany relationships and transactions] are so substantial as to threaten the realization of any net assets for all the creditors. . . ."[11] One Second Circuit decision summarizes the key

---

10 Eastgroup Properties, 935 F.2d at 249 ("[T]he basic criterion by which to evaluate a proposed substantive consolidation is whether 'the economic prejudice of continued debtor separateness' outweighs 'the economic prejudice of consolidation.'"); In re Giller, 962 F.2d 796, 799 (8th Cir. 1992) (factors to consider include whether the benefits of consolidation outweigh the harm to creditors, and the prejudice resulting from not consolidating the debtors); In re Hemingway Transp., Inc., 954 F.2d 1, 12 (1st Cir. 1992) ("[T]he party requesting substantive consolidation must satisfy the bankruptcy court that, on balance, consolidation will foster a net benefit among all holders of unsecured claims."), cert. denied, 510 U.S. 914 (1993); In re Central European Industrial Development Co. LLC, 288 B.R. at 576. In order to properly apply this balancing of interests "a court must conduct a searching inquiry to ensure that consolidation yields benefits offsetting the harm it inflicts on objecting parties." Auto-Train, 810 F.2d at 276; Snider Bros., 18 B.R. at 238; Eastgroup Properties, 935 F.2d at 249; Soviero v. Franklin National Bank of Long Island, 328 F.2d 446, 447-48 (2d Cir. 1964); In re Amereco Envtl. Servs., 125 B.R. 566, 568 (Bankr. W.D. Mo. 1991); accord In re Vecco Constr. Indus., 4 B.R. 407 (Bankr. E.D. Va. 1980) (creditors did not object); In re F.A. Potts & Co., 23 B.R. 569 (Bankr. E.D. Pa. 1982) (objecting creditors failed to establish undue prejudice); In re Stevenson, 153 B.R. 52 (Bankr. D. Idaho 1993) (main requirement for substantive consolidation is that no creditor's or interested party's rights be prejudiced); In re Alico Mining Co., 278 B.R. at 589 (proponent must show substantial identity between the entities to be consolidated and that consolidation is necessary to avoid some harm or to realize some benefit). One lower court has held that substantive consolidation can be effected, in the absence of creditor objection, where the debtors functioned as a consolidated entity and had multiple inter-debtor guarantees and debts. In re Standard Brands Paint Company, 154 B.R. 563, 571-72 (Bankr. C.D. Cal. 1993).

11 Kheel, 369 F.2d at 847. In Kheel, several debtor corporations were owned and controlled by the same individual and operated as a single unit without regard to corporate formalities observed by independent corporations. Funds were transferred and loans were made between corporations without proper record keeping, debts were incurred to pay the obligations of related corporations and the corporations collected funds and paid expenses for their common owner. The court ordered consolidation based upon the practical impossibility of sorting out the debtor's records to determine intercorporate claims and their separate assets and liabilities, and because even if such an effort were undertaken there would be no assurance that a fair reflection of the financial condition of each individual debtor could be obtained. See also Continental Vending Mach., 517 F.2d at 1001 (the inequities among creditors caused by substantive consolidation "must be heavily outweighed by practical considerations such as the accounting difficulties (and expense) which may occur where the interrelationships of the corporate group are highly complex, or perhaps untraceable"); Augie/Restivo, 860 F.2d at 519 (notwithstanding entanglement of records and business affairs, consolidation "should be used only after it has been determined that all creditors will

(continued...)

factors as (i) whether creditors dealt with the entities as a single economic unit and did not rely on their separate identity in extending credit or (ii) whether the affairs of the debtors are so entangled that consolidation will benefit all creditors.[12] The Third Circuit adopted a somewhat similar test holding that:

> In our Court what must be proven (absent consent) concerning the entities for whom substantive consolidation is sought is that (i) prepetition they disregarded separateness so significantly their creditors relied on the breakdown of entity borders and treated them as one legal entity, or (ii) postpetition their assets and liabilities are so scrambled that separating them is prohibitive and hurts all creditors.

In re Owens Corning, 419 F.3d at 211 (citations omitted).[13]

Courts have also ordered substantive consolidation where consolidation would enhance the debtor's chances of successful reorganization.[14] Arguably, certain of these cases reflect "the courts' recognition of the increasingly widespread existence in the business world of parent and subsidiary corporations with interrelated corporate structures and functions"[15] and suggest that,

---

(...continued)

benefit because untangling is either impossible or so costly as to consume the assets"). See also Nesbit v. Gears Unlimited, Inc., 347 F.3d 72, 87 fn. 7 (3d Cir. 2003), cert. denied, 541 U.S. 959 (2004) (summarizing the various tests used by the different Circuit Courts of Appeals); In re Homepatient, Inc., 298 B.R. at 165-66.

12 Augie/Restivo, 860 F.2d at 518. See also In re Bonham, 229 F.3d 750 (9th Cir. 2000) (adopting Augie/Restivo test); In re Brentwood Golf Club, L.L.C., 329 B.R. 239 (E.D. Mich. 2005) (applying Augie/Restivo test).

13 See also In re American Camshaft Specialties, Inc. 410 BR at 787 (Bankruptcy Court in Michigan adopts Owens Corning analysis in the absence of a decision on point by the Sixth Circuit).

14 In re Manzey Land & Cattle Co., 17 B.R. 332, 338 (Bankr. D.S.D. 1982) ("One of the policies behind the enactment of Chapter 11 is to give a debtor one meaningful and reasonable chance to rehabilitate. This Court finds substantive consolidation in this case furthers that intent of Congress."); F.A. Potts & Co., 23 B.R. at 573 ("[S]ubstantive consolidation is necessary to facilitate the filing of a comprehensive and consolidated plan of reorganization."); In re Munford Inc., 115 B.R. 390, 396 (Bankr. N.D. Ga. 1990) ("impact of consolidation on the chances of successful reorganization is another well used criterion to justify substantive consolidation").

15 F.A. Potts & Co., 23 B.R. at 571; see also Eastgroup Properties, 935 F.2d at 248-249 (noting a "modern or liberal" trend toward allowing substantive consolidation in "recognition of the widespread use of interrelated corporate structures by subsidiary corporations operating under a parent entity's corporate umbrella. . . ."); Vecco Construction, 4 B.R. at 407; In re Interstate Stores, Inc., 1 B.R. 755 (Bankr. S.D.N.Y. 1980). It has been suggested that such recognition of interrelated corporate structures expresses a

(continued...)

in the absence of harm or prejudice to any particular group, a court would be less concerned with traditional concepts. For instance, under a test followed by a number of courts, including the District of Columbia Circuit and the Eleventh Circuit (the "Balancing Test"), the proponent of substantive consolidation must show: (1) a substantial identity between the entities to be consolidated; and (2) that consolidation is necessary to avoid some harm or to realize some benefit.[16] If such showing is made, then, if a creditor objects and demonstrates that it relied on the separate credit of one of the entities and that it will be prejudiced by the consolidation, the court may order consolidation only if it determines that the benefits of consolidation "heavily" outweigh the harm.[17] Thus, before permitting substantive consolidation, the courts in these cases have still emphasized the absence of any harm or prejudice to any particular group, or have concluded, after considering the equities, that any harm or prejudice is outweighed by the benefits of substantive consolidation.[18]

(...continued)

view known as "enterprise law": the application of legal principles based upon a finding that related debtors are conducting an economically integrated business as consistent parts of a single enterprise, notwithstanding formal organization of the components as separate legal entities. See Phillip I. Blumberg, The Law of Corporate Groups: Procedural Problems of Parent & Subsidiary Corporations, §§ 1.03, 10.10.1 (1985). That commentator has also stated that:

> Although the [Kheel] case noted that consolidation was to be used sparingly and this theme has been echoed on a number of occasions since, the reality is plain: The courts are increasingly ready to order consolidation for economically integrated debtors in a corporate group when it will implement the administration of the estate.

Id. at §10.11.7. But see In re Owens Corning, 419 F.3d at 209 n. 15 ("[W]e disagree with the assertion of a 'liberal trend' toward use of substantive consolidation – e.g. Eastgroup . . ."); In re World Access, Inc., 301 B.R. at 272 fn. 57 ("Although certain courts have observed a 'modern' trend toward more 'liberal' application of the doctrine, this Court is skeptical of the liberal approach.") (citations omitted).

16 See, e.g., Auto-Train, 810 F.2d at 276; Eastgroup Property, 935 F.2d at 249 (adopting Balancing Test); see also Reider v. FDIC (In re Reider), 31 F.3d 1102, 1108-09 (11th Cir. 1994) (adopting Balancing Test as modified in the context of debtor spouses); In re Giller, 962 F.2d at 796 (adopting similar test considering: (1) the necessity of consolidation due to the interrelationship among the debtors; (2) whether the benefits of consolidation outweigh the harm to creditors; and (3) prejudice resulting from not consolidating the debtors); In re Affiliated Foods, Inc., 249 B.R. 770 (Bankr. W.D. Mo. 2000) (adopting In re Giller test). But see In re Owens Corning, 419 F.3d at 210 ("[W]e disagree that '[i]f a creditor makes [a showing of reliance on separateness], the court may order consolidation . . . if it determines that the demonstrated benefits of consolidation 'heavily' outweigh the harm).'"

17 Id.

18 See also Manzey Land & Cattle Co., 17 B.R. at 338 (no prejudice); F.A. Potts & Co., 23 B.R. at 574 (no prejudice); Munford, 115 B.R. at 395-96 (on a motion to dismiss a substantive consolidation complaint, the (continued...)

With respect to the first two prongs of the Balancing Test, certain courts have sometimes used a checklist of factors. The court in Vecco Construction, 4 B.R. at 410, enumerated certain of the most widely cited criteria for determining whether consolidation is prima facia appropriate:

1. The commingling of assets and business functions.

2. The degree of difficulty in segregating and ascertaining individual assets and liabilities.

3. The existence of parent and intercorporate guarantees of loans.

4. The transfer of assets without observance of corporate formalities.

5. The presence or absence of consolidated financial statements.

6. The unity of interests and ownership between the various corporate entities.

7. The profitability of consolidating at a single physical location.

In addition to the Vecco criteria, the court in Eastgroup included the following additional factors in applying the test described above:

1. The entities having common officers or directors.

2. The subsidiary being grossly undercapitalized.

3. The subsidiary transacting business solely with the parent.

4. Both entities disregarding the legal existence of the subsidiary as a separate organization.

See Eastgroup, 935 F.2d at 250. Because decisions regarding substantive consolidation are made on a case-by-case basis by a court of equity, there is no certainty as to the factors on which a

(...continued)
court indicated that consolidation would not prejudice creditors); In re Nite Lite Inns, 17 B.R. 367, 371 (Bankr. S.D. Cal. 1982) (no prejudice); In re Murray Industries Inc., 119 B.R. 820, 832 (Bankr. M.D. Fla. 1990) (the court concluded, after consideration of the relevant equities and noting the support of the official creditors' committee for substantive consolidation, that the benefits to creditors from substantive consolidation outweighed the prejudice to an equity holder and a creditor who was an insider).

court will focus in a particular case. However, the existence of several of the factors listed above should not, by themselves, result in the application of the substantive consolidation doctrine. See In re Creditors Serv. Corp., 195 B.R. 680, 690 (Bankr. S.D. Ohio 1996)(the factors merely provide the framework to assist a court's inquiry).[19]

The United States Court of Appeals for the Second Circuit by contrast has ruled that merely furthering the reorganization effort is not, in the absence of the more traditional factors, enough to warrant substantive consolidation.[20] The Second Circuit stated:

> [W]e do not believe that a proposed reorganization plan alone can justify substantive consolidation. Where, as in the instant case, creditors such as Union and MHTC knowingly made loans to separate entities and no irremediable commingling of assets has occurred, a creditor cannot be made to sacrifice the priority of its claims against its debtor by fiat based on the bankruptcy court's speculation that it knows the creditor's interests better than does the creditor itself.[21]

In a well-reasoned case, the Third Circuit in Owens Corning summarized the case law as follows:

> Ultimately most courts slipstreamed behind two rationales--those of the Second Circuit in Augie/Restivo and the D.C. Circuit in Auto-Train. The former found that the competing "considerations are merely variants on two critical factors: (i) whether creditors dealt with the entities as a single economic unit and did not rely on their separate identity in extending credit . . . or (ii) whether the affairs of the debtors are so entangled that consolidation will benefit all creditors . . . ." In re Augie/Restivo, 860 F.2d at 518 (internal quotation marks and citations omitted). Auto-Train

---

19 See, also, Eastgroup Properties, 935 F.2d at 250; Snider Bros, 18 B.R. at 234; see also In re World Access, Inc., 301 B.R. at 277 (holding that proponents of substantive consolidation did not make a prima facie case for consolidation even though certain of the Vecco Construction factors were met where other "more important factors" were not met, such as commingling of assets, poor record keeping causing difficulty in segregating assets and transfers made without observance of corporate formalities).

20 Unlike the cases cited supra note 32 in which no prejudice was found to exist, the Second Circuit in Augie/Restivo found that consolidation would unfairly prejudice the principal creditor of one of the debtors. Augie/Restivo, 860 F.2d at 520.

21 Augie/Restivo, 860 F.2d at 520; accord, In re Owens Corning, 419 F.3d at 203.

> touched many of the same analytical bases as the prior Second Circuit cases, but in the end chose as its over-arching test the "substantial identity" of the entities and made allowance for consolidation in spite of creditor reliance on separateness when "the demonstrated benefits of consolidation 'heavily' outweigh the harm." In re Auto-Train, 810 F.2d at 276 (citation omitted).[22]

The court then went on to criticize the Balancing Test as set forth in the Auto-Train decision by stating as follows:

> To us [the Auto-Train test] fails to capture completely the few times substantive consolidation may be considered and then, when it does hit one chord, it allows a threshold not sufficiently egregious and too imprecise for easy measure. For example, we disagree that "if a creditor makes [a showing of reliance on separateness], the court may order consolidation . . . if it determines that the demonstrated benefits of consolidation 'heavily' outweigh the harm." If an objecting creditor relied on the separateness of the entities, consolidation cannot be justified vis-à-vis the claims of that creditor.[23]

We note that certain courts have not permitted (or have been very hesitant to permit) substantive consolidation where one party is a debtor and the other is not a debtor in a bankruptcy case, and so if Exelon or EEDC were a debtor in a bankruptcy case, but Holdco was not, or if Exelon, EEDC or Holdco was a debtor in a bankruptcy case, but Pepco Holdings or any of the Pepco Holdings Utilities was not, a proponent of substantive consolidation may face an additional hurdle.[24]

---

22 419 F.3d at 207-208.

23 Id. at 210.

24 2 Collier on Bankruptcy, ¶ 105.09[1][c] at 105-92 (courts divided on whether to permit consolidation of a debtor with a nondebtor, but most courts permit such consolidation); see also In re Lease-A-Fleet, Inc., 141 B.R. 869, 872 (Bankr. E.D. Pa. 1992) ("[C]aution must be multiplied exponentially in a situation where a consolidation of a debtor's case with a non-debtor is attempted, by a single party which . . . is a creditor of the debtor only and whose efforts are not joined by any other interested parties."); In re Alpha & Omega Realty, Inc., 36 B.R. 416 (Bankr. D. Idaho 1984). Cf. Chauncey H. Levy, Joint Administration and Consolidation, 85 Comm. L.J. 538, 589 & nn.9-10 (1980). (Certain courts have held that substantive consolidation can be used with similar effect to extend the debtor's bankruptcy proceeding to include in the debtor's estate the assets of a related entity which is not a debtor in a case under the Bankruptcy Code); Munford, 115 B.R. 398 (Substantive consolidation "is recognized as an alternative means to bring a non-
(continued...)

B. Application of Case Law Principles

As is evident from the discussion above, there is no single dispositive factor or set of factors applied consistently in substantive consolidation cases. Indeed, the courts have developed several different analytical frameworks. Under any of those frameworks, however, a bankruptcy court of competent jurisdiction should not apply the doctrine of substantive consolidation to consolidate (a) the assets and liabilities of Holdco with the assets and liabilities of Exelon and/or EEDC or (b) the assets and liabilities of Pepco Holdings or the Pepco Holdings Utilities with the assets and liabilities of Exelon, EEDC and/or Holdco, as the case may be.

The application of the doctrine of substantive consolidation is extremely fact-intensive and relates to facts not only as they exist now, but also as they may exist in the future. Accordingly, case law is only a general guide in attempting to anticipate what circumstances merit its application. Thus, the question whether, and in what circumstances, a court would order substantive consolidation cannot be definitively answered in the abstract, but must take into account the actual facts and circumstances of the operation and relations of those entities over time. Accordingly, any opinion on substantive consolidation, including this opinion letter, is particularly dependent on the factual assumptions, such as those made in Part I of this opinion letter.[25]

1. Substantial Identity

Based upon the facts and assumptions contained herein which we have assumed are and will continue in the future to be true, we believe that it would be very difficult for a party in interest in a federal bankruptcy proceeding under the Bankruptcy Code to successfully claim that recognition of the Exelon Entities as separate from Holdco or recognition of Pepco Holdings and the Pepco Holdings Utilities as separate from the Exelon Entities and Holdco would be inequitable, or result in a fraud or injustice on creditors, or that Holdco, Pepco Holdings or the

(...continued)

debtor's assets into a debtor's estate."); In re Owens Corning, 419 F.3d at 208 n. 13 (agreeing that substantive consolidation can be used to consolidate a non-debtor with a debtor); 2 Collier on Bankruptcy, ¶105.09[1][c] (15th ed. rev. 2005) ("The courts are divided on whether they may order consolidation of a debtor with a nondebtor.").

25 In this regard, we note that certain of the facts cited in the bankruptcy court's opinion in In re Buckhead Am. Corp., Nos. 91-978 to 91-986 (Bankr. D. Del. August 13, 1992) as the basis for the substantive consolidation of the debtors named therein (such as commingling of bank accounts, payment of debtors' expenses from one joint account and entangled interrelationships) are different than those assumed herein and also appear to be different from the facts which, we understand, provided the basis for a legal opinion delivered prior to the commencement of the bankruptcy case that certain of such debtors would not be substantively consolidated.

Pepco Holdings Utilities were a "mere instrumentality" or "alter ego" of the Exelon Entities or Holdco, as applicable.[26]

Furthermore, based on the facts and assumptions contained herein, it would be very difficult for a creditor of Exelon or EEDC to demonstrate reasonable reliance on the assets or credit of Holdco, Pepco Holdings or the Pepco Holdings Utilities or for a creditor of Holdco to demonstrate reasonable reliance on the assets or credit of Pepco Holdings or the Pepco Holdings Utilities. We also believe that it is unlikely that such a creditor could contend justifiably that the organizational structure of the Exelon Entities, Holdco, Pepco Holdings and the Pepco Holdings Utilities misled creditors by making it appear that they were one unit or other than separate units, that the affairs of the Exelon Entities, Holdco, Pepco Holdings and the Pepco Holdings Utilities were so entangled that it would be too costly or time consuming to deal with them separately, or that it appeared that the assets of Holdco, Pepco Holdings or the Pepco Holdings Utilities were available to meet claims of the creditors of one of the Exelon Entities or the assets of Pepco Holdings or the Pepco Holdings Utilities were available to meet claims of the creditors of Holdco. Accordingly, the affairs and assets of the Exelon Entities, Holdco, Pepco Holdings and the Pepco Holdings Utilities would not be commingled or entangled in a way that substantive consolidation is warranted or would benefit all creditors. Creditors of Exelon have relied on Exelon's identity as a legal entity separate from Holdco.[27] Similarly, creditors of Pepco

---

[26] We note in this respect that, absent findings of fraud or bad faith, courts have held that a corporation is entitled to a presumption of separateness from an affiliated corporation. Crown Cent. Petroleum Corp. v. Cosmopolitan Shipping Co., 602 F.2d 474, 476 (2d Cir. 1979); Pauley Petroleum, Inc. v. Continental Oil Co., 231 A.2d 450, 452 (Del. Ch. 1967), aff'd 239 A.2d 629 (Del. 1968). The Supreme Court has specifically ruled that "legitimate good faith business transactions [between affiliated corporations], neither in design or effect producing injury [to creditors]" are not to be disallowed or subordinated. Comstock v. Group of Institutional Investors, 335 U.S. 211, 228-29(1948); see also Small v. Williams, 313 F.2d 39, 42 (4th Cir. 1963) ("Neither in law nor in equity . . . is there any rule of general impropriety in the extension of credit by a dominant stockholder to his corporation" as long as there is "good faith in the effectuation [and] in the implementation of the transaction."). Similarly, in Anaconda Bldg. Materials Co. v. Newland, 336 F.2d 625 (9th Cir. 1964), the court considered the ability of a corporate parent's creditors to reach the assets of the parent's financial subsidiaries. The parent, a builder of prefabricated homes, had formed four subsidiaries to sell debentures in order to raise cash. The funds were used to buy the parent's mortgages at a discount. The parent then used the money in its construction business. Id. at 626-27. The court, affirming the decision of the court below on a "clearly erroneous" standard, declined to permit creditors of the parent to reach the assets of the subsidiaries because (i) the subsidiaries were operated as separate entities; (ii) on balance, the parent was the beneficiary of the corporate relationship; (iii) the objecting creditors did not rely upon the credit of the subsidiaries and were benefited rather than prejudiced by the way in which the subsidiaries were operated; (iv) there was no fraud or overreaching attributable to the subsidiaries or the debenture holders detrimental to the objecting creditors; and (v) there was no unjust enrichment of the debenture holders. Id. at 628.

[27] You have advised that EEDC does not have any creditors.

Holdings and the Pepco Holdings Utilities have relied on Pepco Holdings and the Pepco Holdings Utilities' identity as legal entities separate from the Exelon Entities and Holdco.[28] Thus, creditors have dealt with Exelon, Pepco Holdings and the Pepco Holdings Utilities as separate entities, relied on their separateness, and certain creditors would undoubtedly be prejudiced by substantive consolidation of either Holdco with one of the Exelon Entities or of Pepco Holdings or any of the Pepco Holdings Utilities with Holdco or the Exelon Entities. Based on the above, we believe that a court should not consolidate Holdco with either of the Exelon Entities or Pepco Holdings or the Pepco Holdings Utilities with Holdco or either of the Exelon Entities under the Second Circuit test described above, which has been adopted by the Ninth Circuit in In re Bonham or the test adopted by the Third Circuit in In re Owens Corning.

As outlined below, we believe that at least five of seven listed Vecco Construction criteria (numbers 1, 2, 3, 4 and 7) and three of the additional criteria referred to in Eastgroup (numbers 2, 3 and 4) have no substantial application to the present case. The other factors, although present to some extent, are not, in our view, significant enough in the present situation to cause a court to order substantive consolidation of Holdco with Exelon and/or EEDC or of Pepco Holdings or the Pepco Holdings Utilities with Holdco or either of the Exelon Entities, particularly in light of all of the facts described above supporting the separateness of the Exelon Entities, Holdco, Pepco Holdings and the Pepco Holdings Utilities.

With regard to the first of the Vecco Construction factors, the primary business functions of Pepco Holdings and the Pepco Holdings Utilities are, and under regulatory constraints, may only be, performed by Pepco Holdings or the Pepco Holdings Utilities, as applicable. Any overlapping of the assets or business functions of the Exelon Entities with those of Holdco, Pepco Holdings or the Pepco Holdings Utilities or of Holdco with Pepco Holdings or the Pepco Holdings Utilities is incidental and significantly offset by the fact that the other companies strictly observe corporate formalities and regulatory requirements vis-à-vis one another and maintain separate books and records for all of their business functions.

With regard to the second factor, as required by regulatory requirements, the individual assets and liabilities of Holdco, Pepco Holdings and the Pepco Holdings Utilities are segregated and kept separate from those of the Exelon Entities and vice versa. Similarly, the individual assets and liabilities of Pepco Holdings and the Pepco Holdings Utilities are segregated and kept separate from those of Holdco and vice versa. Moreover, each of Exelon, Pepco Holdings and the Pepco Holdings Utilities must follow accounting procedures prescribed by the United States Securities and Exchange Commission and by the Federal Energy Regulatory Commission. Although Exelon's consolidated financial statements include assets of Holdco, Pepco Holdings and the Pepco Holdings Utilities, as required under GAAP, Exelon's financial statements are

---

[28] You have advised that Holdco does not have any creditors.

publicly reported together with separate financial statements for Pepco Holdings and the Pepco Holdings Utilities, which clearly disclose the separate assets belonging to Pepco Holdings, the Pepco Holdings Utilities and their subsidiaries. Accordingly, ascertaining the individual assets and liabilities of Pepco Holdings and the Pepco Holdings Utilities should not be unduly difficult.

With regard to the third factor, none of Pepco Holdings or the Pepco Holdings Utilities have provided, and are prohibited under the regulatory orders authorizing the Merger and the Pepco Holdings Utilities' corporate governance principles from providing, any intercorporate guarantees to Holdco or the Exelon Entities on any indebtedness or other obligations of Holdco or the Exelon Entities. Holdco has not provided, and is prohibited under the regulatory orders authorizing the Merger and the Holdco Operating Agreement from providing, any intercorporate guarantees to either of the Exelon Entities on any indebtedness or other obligations of either of the Exelon Entities. Conversely, there have not been and will not be any parent or intercorporate guarantees provided by Exelon Entities on any indebtedness for borrowed money of Holdco, Pepco Holdings or the Pepco Holdings Utilities or by Holdco on any indebtedness for borrowed money of Pepco Holdings or the Pepco Holdings Utilities. Holdco has not held and may not hold itself out or will hold itself out, or will permit itself to be held out, as having agreed to pay or as being liable for the debts of an Exelon Entity. None of Pepco Holdings or the Pepco Holdings Utilities has held itself out nor will hold itself out, or will permit itself to be held out, as having agreed to pay or as being liable for the debts of Holdco or the Exelon Entities.

With regard to the fourth factor, we note that (i) all arrangements and agreements between and among, the Exelon Entities, Holdco, Pepco Holdings and the Pepco Holdings Utilities have been and will continue to be evidenced by written arrangements or agreements containing arm's-length terms as described above, (ii) there will be no transfers of assets without observance of corporate formalities and accurate recordkeeping, and (iii) the parties will maintain appropriate records in order to be able to ascertain and segregate their respective assets.

With regard to the fifth factor, we note that although consolidated financial statements will be prepared for Exelon and its subsidiaries, including Pepco Holdings and the Pepco Holdings Utilities, the annual reports on Form 10-K and quarterly reports on Form 10-Q have and will continue to include Pepco Holdings and the Pepco Holdings Utilities' separate financial statements. Thus, Pepco Holdings and the Pepco Holdings Utilities will continue to prepare separate financial statements which clearly disclose the separate assets belonging to Pepco Holdings and the Pepco Holdings Utilities and their subsidiaries. In our view, the factor concerning consolidated financial statements relates to the ease of separating assets and liabilities and, more importantly, the equitable consideration of whether the creditors of the different corporations viewed them as one entity. As noted above, Pepco Holdings and the Pepco Holdings Utilities' assets and liabilities can be easily separated from those of the Exelon Entities and Holdco and have been and will be reported to regulators of Pepco Holdings and the Pepco

Holdings Utilities, to the financial markets and to creditors of Pepco Holdings and the Pepco Holdings Utilities as such.

With regard to the sixth factor, there is a substantial unity of interests between Exelon and Holdco in that Exelon indirectly owns 100% of Holdco's common equity interests through EEDC. As noted above, Holdco has issued a non-economic share to Member B, which restricts the right of Holdco to take certain bankruptcy-related actions. There is also a substantial unity of interests between Holdco and Pepco Holdings in that Holdco owns 100% of Pepco Holdings' membership interests. The courts have in any event recognized a distinction between the ownership of a subsidiary's equity and of its assets. See In re Beck Indus. Inc., 479 F.2d 410, 415 (2d Cir. 1973), cert. denied, 414 U.S. 858 (1973). We are not aware of any case holding that majority ownership of a subsidiary's stock is sufficient in and of itself to warrant substantive consolidation; were that the case, then the more stringent tests articulated by all of the circuit courts for ordering consolidation would be superfluous. The courts have recognized a distinction between the ownership of an equity interest and of the entity's assets. See footnote 26 and cases cited therein.

The seventh factor should also not result in consolidation. The Exelon Entities have multiple locations dedicated to their own operations, and Holdco, Pepco Holdings and the Pepco Holdings Utilities have multiple locations dedicated their operations. A limited number of officers and employees of Exelon Entities may occupy or use office facilities in locations otherwise dedicated for use by Pepco Holdings and the Pepco Holdings Utilities but will engage in work-activities at those locations on behalf of the Exelon Entities and not as purported officers or employees of Pepco Holdings or the Pepco Holdings Utilities. In addition, some Exelon Entities formerly affiliated with Pepco Holdings may occupy physically separate and secure space as tenants in buildings occupied by Pepco Holdings or the Pepco Holdings Utilities. These arrangements will facilitate the fulfillment of various requirements of regulatory orders authorizing the Merger and will be conducted in accordance with the Ring-Fencing Measures. We are unaware of any other discernable benefit, which would come from allowing the respective entities to share operations on each such location. Moreover, such physical consolidation of operations could be achieved without effecting a substantive consolidation to the detriment of creditors.

The additional factors cited by the Eastgroup court should similarly not be sufficient to warrant consolidation. Although the entities have limited common officers or directors, Holdco's directors, and not the Exelon Entities', are charged with the responsibility of managing the affairs of Holdco. Holdco, Pepco Holdings and the Pepco Holdings Utilities have observed the legal requirements for ensuring that each of Pepco Holdings and the Pepco Holdings Utilities is managed under the supervision of its own board of directors and for otherwise maintaining each of Pepco Holdings and the Pepco Holdings Utilities as a separate entity from Holdco and the Exelon Entities, and vice versa. Many courts have recognized that "it is entirely appropriate

for directors of a parent corporation to serve as directors of its subsidiary, and that fact alone may not serve to expose the parent corporation to liability for its subsidiary's acts." U.S. v. Bestfoods, 524 U.S. 51, 69 (1998); see also G-I Holdings, 2001 WL 1598178, at *8 (the court noted that the existence of a common management agreement as to financial, administrative and legal functions, which resulted in overlapping management between corporations, is common in the corporate world and alone is not sufficient for establishing liability).

In light of the above, we would not expect a court to find "substantial identity" based on analyzing the objective factors articulated in Vecco Construction and Eastgroup. Moreover, substantial identity itself is not in and of itself a sufficient ground for consolidation; the court must also find that the benefits of consolidation outweigh the harm. Auto-Train, 810 F.2d at 276; Eastgroup Properties, 935 F.2d at 250. As noted supra, the presence of even several of the Vecco Construction factors does not require substantive consolidation.[29] In the present situation, while certain factors arguably support substantive consolidation, on balance we do not believe that the presence of such factors should warrant substantive consolidation.

2. Benefit or Harm from Consolidation

Even if a proponent of substantive consolidation demonstrates a "substantial identity" between the Exelon Entities on the one hand and Holdco on the other hand or between Holdco or the Exelon Entities on the one hand and Pepco Holdings or the Pepco Holdings Utilities on the other hand (which in each case, as noted above, we do not believe is correct), the proponent must show that substantive consolidation is necessary to avoid some harm or realize some benefit. In the present situation, there does not appear to be any "harm" that needs to be avoided. As discussed above, Holdco has and will consistently hold itself out as an entity separate and distinct from the Exelon Entities and vice versa. Similarly, each of Pepco Holdings and the Pepco Holdings Utilities has and will consistently hold itself out as an entity separate and distinct from Holdco and the Exelon Entities and vice versa. Further, Exelon, Pepco Holdings and the Pepco Holdings Utilities will disclose the existence of Holdco and the implementation of the Ring-Fencing Measures in the Holdco Disclosure Reports, which are and will be publicly available. Creditors of the Exelon Entities and Holdco should therefore have no reasonable basis to allege that they relied on the assets of Holdco as assets of the Exelon Entities (as opposed to the Exelon Entities simply having an equity interest in Holdco) or the assets of Pepco Holdings or the Pepco Holdings Utilities as assets of Holdco or the Exelon Entities (as opposed to Holdco simply having an equity interest in Pepco Holdings). Thus, there does not appear to be any harm that needs to be redressed.

---

[29] See also In re Creditor Serv. Corp., 195 B.R. at 690 (stating that the factors "merely provide the framework" to a court's inquiry and "standing alone, are not dispositive of the issue to consolidate")

III. Opinion

Based on the foregoing facts and assumptions being correct and continuing to be correct at all relevant times, and subject to the qualifications, limitations and discussion set forth herein and the reasoned analysis of analogous case law (although there is no case directly on point), we are of the opinion that:

(a) in a properly presented and argued proceeding in a case under the Bankruptcy Code in which Exelon and/or EEDC were a debtor, a United States bankruptcy court of competent jurisdiction would not, under applicable federal bankruptcy law, apply the doctrine of substantive consolidation to consolidate the assets and liabilities of Holdco with the assets and liabilities of such debtor; and

(b) in a properly presented and argued proceeding in a case under the Bankruptcy Code in which Holdco, Exelon and/or EEDC were a debtor, a United States bankruptcy court of competent jurisdiction would not, under applicable federal bankruptcy law, apply the doctrine of substantive consolidation to consolidate the assets and liabilities of Pepco Holdings or the Pepco Holdings Utilities with the assets and liabilities of such debtor.

We express no opinion as to the availability or effect of a preliminary injunction, temporary restraining order or other such temporary relief affording delay pending a determination on the merits in the event that substantive consolidation of the assets and liabilities of an Exelon Entity, or Holdco, as applicable, with those of Holdco, Pepco Holdings or the Pepco Holdings Utilities, as applicable, is sought.

In rendering the above opinions, we wish to note that there is no reported controlling judicial precedent directly on point. We therefore examined decisions in which certain of the facts and circumstances set forth in Part I of this opinion were present as well as cases discussing more generally substantive consolidation. Judicial analysis has typically proceeded on a case-by-case basis. The determination is usually made on the basis of an analysis of the facts and circumstances of the particular case, rather than as a result of the application of consistently applied legal doctrines. Existing reported decisional authority is thus not conclusive as to the relative weight to be accorded the factors present in the facts and assumptions set forth in Part I hereof and does not provide consistently applied general principles or guidelines with which to analyze all of the factors present in the facts and assumptions set forth in Part I above.

We have assumed throughout this opinion (i) that there has been no (and will not be any) fraud in connection with the transactions described herein and (ii) the accuracy of the factual matters referred to herein.

Moreover, the authorities we have examined contain certain cases and authorities that are arguably inconsistent with our conclusions expressed herein. These cases and authorities are, however, in our opinion distinguishable in the current context.

This opinion letter relates solely to the Bankruptcy Code and the federal bankruptcy laws of the United States, and thus, we express no opinion as the law of any state. The opinions expressed herein are not a guaranty as to what any particular court would actually hold, but a reasoned opinion as to the decision a court would reach if the issues are properly presented to it and the court followed existing precedent as to legal and equitable principles applicable in bankruptcy cases. Thus, notwithstanding our analysis and conclusions, a court's decision in determining whether substantive consolidation should be ordered is based on its own analysis and interpretation of the factual evidence before it and applicable legal principles. Accordingly, a different conclusion could be reached and would not necessarily constitute reversible error. In this regard, we note that legal opinions on bankruptcy law matters unavoidably have inherent limitations that generally do not exist in respect of other issues on which opinions to third parties are typically given. These inherent limitations exist primarily because of the pervasive equity powers of bankruptcy courts, the overriding goal of reorganization to which other legal rights and policies may be subordinated, the potential relevance to the exercise of judicial discretion of future arising facts and circumstances, and the nature of the bankruptcy process.

This opinion letter is limited to the matters expressly stated herein. No implied opinion may be inferred to extend this opinion letter beyond the matters expressly stated herein.

All of the foregoing analyses and conclusions are premised upon, and limited to, the law in effect as of the date of this opinion.

Our opinions are subject to the effect of general principles of equity, including, without limitation, limitations on the availability of equitable remedies and concepts of materiality, reasonableness, good faith and fair dealing, and other similar doctrines affecting the agreements generally (regardless of whether considered in a proceeding in equity or at law).

This opinion letter is subject to the further qualifications that (i) the assumptions set forth herein are and continue to be true in all material respects and (ii) there are no additional facts that would materially affect the validity of the assumptions and conclusions set forth herein or upon which this opinion letter is based.

We do not undertake to advise you or anyone else of any changes in the opinions expressed herein resulting from the changes in law, changes in facts, or any other matters that hereafter might occur or be brought to our attention.

Very truly yours

Ballard Spahr LLP